

## **DETAILED ACTION**

### ***Remarks***

1. The patent application filed on August 28, 2003 has been received. Claims 1 - 12 are now pending.
2. The foreign priority claimed to Japanese patent document 2002-251861 is acknowledged.

### ***Examiner Interpretations***

First and second indication information is interpreted to mean file and directory information

Third indication information is interpreted to mean a pointer or file name of a file where the files are listed as a flat list of files

### ***Notes Regarding Statutory Subject Matter***

Note: Applicant's original specification page 1 lines 14-24 limits the definition of a recording medium to "storage" hardware effectively considered statutory under 35 USC 101.

### ***Claim Rejections - 35 USC § 101***

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-7 and 11-12 are rejected under 35 U.S.C 101 because the claimed invention is directed to non-statutory subject matter. The claims recite "a data selector for selecting" or "a data playback unit for selecting", but recite no memory and processor in the system to perform

the claimed steps. Claims 1-7 and 11-12 are nothing more than software per se (see specification page 20 lines 13-14). The claims lack the necessary physical articles or objects to constitute a machine or manufacture within the meaning of 35 USC 101. They are clearly not a series of steps or acts to be a process nor are they a combination of chemical compounds to be a composition of matter. As such, they fail to fall within a statutory category. They are, at best, functional descriptive material per.

Descriptive material can be characterized as either “functional descriptive material” or “nonfunctional descriptive material.” Both types of “descriptive material” are nonstatutory when claimed as descriptive material per se, 33 F.3d at 1360, 31 USPQ2d at 1759. When functional descriptive material is recorded on some computer-readable medium, it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized. Compare *In re Lowry*, 32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035 (Fed. Cir. 1994). Merely claiming nonfunctional descriptive material, i.e., abstract ideas, stored on a computer-readable medium, in a computer, or on an electromagnetic carrier signal, does not make it statutory. See *Diehr*, 450 U.S. at 185-86, 209 USPQ at 8 (noting that the claims for an algorithm in *Benson* were unpatentable as abstract ideas because “[t]he sole practical application of the algorithm was in connection with the programming of a general purpose computer.”).

#### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jensen MP5010K (Jensen) (applicant admitted prior art showing a review of the Jensen MP5010K) in view of Bradley (US PG Pub 2002/0065810).

As to claim 1, Jensen discloses a data selector for selecting one data unit from data group which contains multiple data units, the multiple data units being managed by use of layered structure consisting of multiple groups and in which one data unit is specified by use of the first indication information indicating at least individual group and the second indication information indicating individual data unit contained in each group, the data selector comprising (see Jensen presets are crucial section paragraph 3):

a receiving device which receives one piece of the third indication information input externally (see Jensen full review section); and

a selection device which selects one data unit corresponding to the one piece of the third indication information received by the receiving device (see id.).

Jensen does not appear to explicitly disclose a generation device, based on said first and second indication information, which generates multiple third indication information corresponding to each of the multiple data units contained in the data group and different from each other;

However, Bradley discloses a generation device, based on said first and second indication information, which generates multiple third indication information corresponding to each of the multiple data units contained in the data group and different from each other (see Bradley paragraphs 126 and 5, wherein a consumer file system can be a standard hierarchical file system with files and directories);

Jensen and Bradley are analogous because they are directed to the same field of endeavor, accessing files from file systems.

At the time of the invention it would have been obvious to one of ordinary skill in the art having the teachings of Jensen and Bradley before him or her, to modify the file directory navigation and direct track number selection of Jensen to include the translation to a flat file system from the files and directories, wherein the flat file system allows each file to be accessed sequentially disclosed in Bradley because to provide the ability to directly select a song by track number when the songs are stored as files in directories a flat sequential list of songs must be generated and using the invention Bradley would be a predictable way to do so.

One of ordinary skill in the art would have been motivated to make this change in order to implement both the sequential access and folder based access disclosed in Jensen.

Therefore it would have been obvious to combine Jensen and Bradley to obtain the instant claim.

As to claim 2, Jensen in view of Bradley discloses wherein the generation device assigns numbers different from each other to each of the multiple data units contained in the data group (see Jensen Presets are crucial section paragraph 1).

As to claim 3, Jensen in view of Bradley discloses wherein the generation device generates data structure table in which the numbers of data units arranged directly within each group has been written for every group and then generates, using this data generation table, the third indication information (see Bradley fig. 3a and paragraph 95 and Jensen Full review paragraph, wherein an array of items is inherently a single row table and the array indices can be used to make the third indication information).

As to claim 4, Jensen discloses a data selector for selecting one data unit from data group which contains multiple data units, the multiple data units being managed by use of layered structure consisting of multiple groups and in which one data unit is specified by use of the first indication information indicating at least individual group and the second indication information indicating individual data unit contained in each group, the data selector comprising (see Jensen presets are crucial section paragraph 3):

a receiving device which receives multiple third indication information corresponding to each of the multiple data units contained in the data group and different from each other when it is input externally(see Jensen Full review paragraph, wherein choosing by track number inherently requires the list of track numbers);

a selection device which selects the one data unit based on the first and second indication information determined by the determination device (see Jensen presets are crucial section paragraph 3).

Jensen does not appear to explicitly a determination device which determines the first and second indication information indicating one data unit corresponding to one piece of the third indication information based on the one piece of the third indication information received by the receiving device; and

However, Bradley discloses a determination device which determines the first and second indication information indicating one data unit corresponding to one piece of the third indication information based on the one piece of the third indication information received by the receiving device (see Bradley paragraphs 126 and 5, wherein a consumer file system can be a standard hierarchical file system with files and directories which are first and second indication information); and

Jensen and Bradley are analogous because they are directed to the same field of endeavor, accessing files from file systems.

At the time of the invention it would have been obvious to one of ordinary skill in the art having the teachings of Jensen and Bradley before him or her, to modify the file directory navigation and direct track number selection of Jensen to include the translation from a flat file system to the files and directories, wherein the flat file system allows each file to be accessed sequentially disclosed in Bradley because to provide the ability to directly select a song by track number when the songs are stored as files in directories the flat file selection must be converted

to access the file from its directory and using the invention Bradley would be a predictable way to do so.

One of ordinary skill in the art would have been motivated to make this change in order to implement both the sequential access and folder based access disclosed in Jensen.

Therefore it would have been obvious to combine Jensen and Bradley to obtain the instant claim.

As to claim 5, Jensen in view of Bradley discloses wherein the third indication information is assigned to each of the multiple data units contained in the data group and different from each other (see Jensen Presets are crucial section paragraph 1, wherein a sequential list of numbers are unique units).

As to claim 6, Jensen in view of Bradley discloses wherein the determination device generates data structure table in which the numbers of data units arranged directly within each group has been written for every group and, using this data structure table, determines the first and second indication information indicating one data unit corresponding to the one piece of the third indication information (see Bradley fig. 3a and paragraph 95 and Jensen Full review paragraph, wherein an array of items is inherently a single row table and the array indices can be used to make the third indication information and therefore to look up the file and directory information as well).

As to claim 7, Jensen in view of Bradley discloses wherein the data selector further comprises a selection indication input device, wherein the selection indication input device comprises:

an operation device which performs input operation (see Jensen Full review paragraph);  
and

an output device which outputs the third indication information corresponding to the one data unit to the receiving device when input operation is performed to select one data unit among the multiple data units using the operation device (see Jensen presets are crucial section paragraph 3).

Claim 8 is rejected under the same premise as claim 1 and further Bradley discloses a recording medium (Bradley paragraph 12).

Claims 9 and 10 are rejected under the same premises as claims 1 and 4 respectively.

Claims 11 and 12 are rejected under the same premise as claims 1 and 4 respectively and furthermore, Jensen discloses

a playback device which plays one data unit selected by the selection device (see Jensen presets are crucial section paragraph 3).

### ***Conclusion***



6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See form 892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KEVIN YOUNG whose telephone number is (571)270-3180. The examiner can normally be reached on Monday to Friday 8:00 AM - 5 PM EDT.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Neveen, Abel-Jalil can be reached on 571-272-4074. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/K. Y./  
Examiner, Art Unit 2165  
3-30-2010

/Neeven Abel-Jalil/

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